sense of the business community. *Reinecke Coal Mining Company* v. *Wood*, 112 Fed. Rep. 477; *Quinn* v. *Leathem*, [1901] A. C. 495, 539. Traders' and laborers' competition are both *prima facie* tortious; but since self-advancement is essential in business, that competition which damages the least possible number — namely, the competitors' immediate rivals — may well be held sufficient justification; while competition affecting others than the competitors' immediate rivals is insufficient.

RIGHTS OF ELECTRIC INTERURBAN RAILWAYS TO USE PUBLIC HIGHWAYS. — The law is settled that where an abutter upon a highway retains the fee of the soil over which the highway runs, the public possesses merely an easement. In view of the rapid growth of interurban electric railways the extent of the right in the public to use the highways without compensation to the abutters becomes at once interesting and important. Very similar questions arose when gas and water pipes, telephone poles, and car tracks were first placed in the streets. All were departures from the previous uses of the public easement. A recent and instructive article has suggested that one general rule should be applied to all these new uses, either in city streets or country roads. *Extent of the Public Easement in Country Highways*, by Henry M. Dowling, 57 Central L. J. 225 (Sept. 18, 1903). The rule suggested is that any new use in order not to be an additional burden must be a local convenience fairly commensurate with the damage inflicted, and must not materially interfere with communication by travel. If this test is not satisfied compensation must be made to abutters.

Some rule must be found to cover the rights of interurban railways. It is decided in most states that steam commercial roads are added burdens. *Adams* v. *Chicago, etc., Co.*, 39 Minn. 286. Street passenger roads are not ordinarily held to be additional servitudes. *West Jersey R. Co.* v. *Camden Co.*, 52 N. J. Eq. 31. No test should be adopted that will shake these decisions on account of the vested interests dependent on them. A test based on motive power alone would not be supported by logic or the decisions. *Newell* v. *Minneapolis, etc., Co.*, 35 Minn. 112; *Rische* v. *Texas Transp. Co.*, 66 S. W. Rep. 324 (Tex.). Some courts have appealed in deciding questions of this character to what they call "the terms of the original grant." This test, however, would appear to be in great part a fiction, since in most cases a telephone pole or gas pipe was just as far from the mind of the grantor as a steam commercial railroad. The test proposed in the article is better in that it is free from legal presumption and accords with decided cases.

Interurban railways occupy a place between commercial roads and street passenger lines. In which class they should fall, will often be difficult to determine. The decision of a given case should depend on the nature of the service which the road under discussion renders. If it is essentially a street passenger road in business and equipment, catering to local traffic, even though the cars run for several miles into the country, it would not appear to be an added burden. *Ehret* v. *Camden, etc., Co.*, 61 N. J. Eq. 171. The general arguments originally made in favor of street railways apply. On the other hand, if the business done is truly interurban, the passengers carried being almost entirely those that formerly rode on steam cars, the arguments used against steam roads would be in point. The fact that a car stops at several places within a city increases the local service rendered but does not alone determine the question, since steam railroads often do the same. The size and speed of interurban cars, and the freight handled make the true interurban railway exceedingly like the ordinary commercial road. The resemblance is especially strong on those lines which run limited cars making but few stops. The street passenger business is a very small part of their traffic. Such a road has properly been held to impose an additional servitude on a country road. *Pa. Co.* v. *Montgomery Co.*, 167 Pa. St. 62; *Schaaf* v. *Cleveland, etc., Co.*, 66 Oh. St. 215. One case has reached the same result as to

city streets. *Lange* v. *La Crosse, etc., Co.*, 95 N. W. Rep. 952 (Wis.). Wisconsin cases on this subject are, however, of doubtful value, since no case in that jurisdiction has decided that ordinary electric roads are not added burdens. On principle the same test should apply to both city streets and country roads. The test proposed by Mr. Dowling appears to be a satisfactory one.

THE PROBATION SYSTEM. — It is said in a recent article that the probation system, existing in several states of this country, is now under official discussion in England. *The "Probation System" in the United States*, Anon., 114 L. T. 407 (Feb. 28, 1903). Under the Massachusetts system, which is described as typical, a convicted criminal is not sentenced, when the chances of his reformation are good, as in a case of a first offense, but is released on condition that for a stated period he lead an orderly life within certain conditions imposed by the judge. If these conditions are not observed, the offender is rearrested and sentenced.

It is interesting to consider the justification for this practice under the different theories of punishment. Probably the oldest idea is that punishment is founded on vengeance. Being supported entirely by emotion, it would seem impossible to ascertain by reason or experiment whether any particular system of punishment follows this theory. But the probation system, which omits the penalty entirely in certain cases, could hardly rest upon any doctrine founded solely on the desire for revenge. The closely related theory of "retribution" reduced to its lowest terms is that the injury to society plus an equal injury to the individual leaves nobody injured. WHAR. CR. L., Chap. I. This doctrine requires some degree of punishment, and would seem to afford no foundation for the system under discussion. A more modern and more satisfactory theory is that society punishes crime to prevent crime. HOLMES COM. L. 43; 64 Am. St. Rep. 378, note. Whether society in seeking to prevent crime is acting from a desire to protect itself or from other reasons, is an ethical question of little practical importance to law-makers. In any case under this theory the object of the punishment is to reduce the chances of a repetition of the criminal act. This gives a practical test to apply in determining the proper penalty, and would seem to completely justify the probation system.

It has been suggested by scientific writers that all crime is but the result of a diseased condition. ROSENBERG AND ARONSTAM'S SOCIOLOGIC STUDIES, Chap. I. The probation system seems to follow this, and seeks to apply a rational restraint upon the criminal. Just as the medical profession of to-day treat many diseases by merely prescribing a hygienic life, so the law-makers under this system, by compelling a period of law-abiding, seek to eradicate the criminal tendency. The system is furthermore in line with other modern changes in inflicting punishments. Statutes are generally prevalent seeking to encourage good behavior in a convicted criminal by granting a deduction from the sentence, and certain jurisdictions have adopted the indeterminate sentence law. ILL. STS. (*Starr & Curtis*) § 646; IND. ACTS, 1897, p. 219.

The theory of probation, that crimes are sometimes best prevented by omitting the punishment, seems sound and, according to the article under discussion, the results attained in Massachusetts are highly satisfactory. Should England adopt it, she will be acting along the lines of modern development, looking to a more carefully graded and more rational system of punishment.

THE DECISION IN THE MERGER CASE. By J. H. Thorndike. Boston: Little, Brown and Company. 1903. pp. 36. 8vo.

This is a review of the decision of the circuit court in the case of the United States *v.* Northern Securities Co. The chief function of the pamphleteer, in the discussion of great problems like this of the extent of the law against monopoly, is to make plain the issues upon which the final decision must depend.